

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Lewis Duckett,	)	C/A No.: 4:07-300-JFA-TER
	)	
Petitioner,	)	
vs.	)	O R D E R
	)	
Collie Rushton, Warden,	)	
	)	
Respondent.	)	
_____	)	

The *pro se* petitioner, Lewis Duckett, initiated this action pursuant to 28 U.S.C. § 2254 seeking relief from his state criminal conviction for murder. Specifically, he alleges that his state trial counsel was ineffective in failing to investigate and call witnesses to testify to petitioner's allegations that the crime area had been tampered with; and that his plead did not proper.

The Magistrate Judge assigned to this action<sup>1</sup> has prepared a comprehensive Report and Recommendation wherein he suggests that the respondent's motion for summary judgment<sup>2</sup> be granted. The Report sets forth in detail the relevant facts and standards of law

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

<sup>2</sup> An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4<sup>th</sup> Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on November 26, 2007. He did not file objections<sup>3</sup> to the Report.

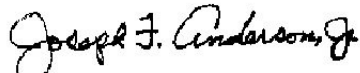
The Magistrate Judge suggests that there was no constitutional violation denying petitioner's state claim of effective assistance of counsel and that counsel met the reasonableness test of *Strickland v. Washington*, 466 U.S. 668 (1984). The Magistrate Judge further opines that there was no constitutional violation and that the petitioner's guilty plea was voluntarily made.

After carefully reviewing the applicable law, the record in this case, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this Report by specific reference.

Accordingly, the respondent's motion for summary judgment is granted.

IT IS SO ORDERED.

January 23, 2008  
Columbia, South Carolina

  
Joseph F. Anderson, Jr.  
United States District Judge

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<sup>3</sup> Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4<sup>th</sup> Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4<sup>th</sup> Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4<sup>th</sup> Cir. 1985).

